

CERTIFICATE OF SERVICE

I hereby certify that true copies of:

1. CELL GENESYS RESPONSE TO PAPER NO. 1, (Addition of Claims)
2. AMENDMENT
3. CERTIFICATE OF SERVICE

were served upon Counsel as follows:

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via Federal Express, this 7th day of APRIL, 2003



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ATTORNEY DOCKET NO: 306229-21
INTERFERENCE 105,114

Paper No.

Filed on behalf of:

By:

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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES
(Administrative Patent Judge Michael P. Tierney)

APPLIED RESEARCH SYSTEMS ARS HOLDING, N.V.

Junior Party
(Patent 5,272,071)

vs.

CELL GENESYS, INC.

Junior Party
(Application 08/102,390)

Patent Interference No.105,114

CELL GENESYS RESPONSE TO PAPER NO. 1
(Addition of Claims)

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AND INTERFERENCES

Responsive to the authorization, Paper No. 1, page 3, to Cell Genesys to present an amendment introducing, in it's involved application, claims to a total of eight (Claims 105 and 106 are already pending) Cell Genesys submits herewith an Amendment introducing Claims 107 - 112. Accordingly, upon entry, the claims pending in the involved Cell Genesys application shall be Claims 105-112. All correspond to current Count 1 of the interference.

With respect to the obligation to show patentability of the claims to Cell Genesys, a comparison table, comparing additional Claims 107 - 112 with literal support appearing in the involved Cell Genesys application (U.S. Patent Application Serial No. 08/102,390) appears at the end of the Amendment. The claims are patentable to Cell Genesys.


Cell Genesys notes that during the conference call of April 2, 2003, the proper test to apply to determine whether one count or more than one count should be used was considered. In particular, the parties discussed with APJ Tierney whether a second count would appropriate if that second count were obvious over the current count, even if the current count were not obvious over the second count. No commitment by the APJ or the parties to any standard was arrived at. Cell Genesys notes that the current count would render a count directed to the cell lines, such as Claim 19 of involved U.S. Patent 5,272,071, Chappel ("Chappel") anticipated or obvious, but the claim, and corresponding claims, such as Claims 105, 106, 110 and 111 of Cell Genesys may not render current Count 1 obvious, as those claims do not require the use of homologous recombination, recited in the current Count, to arrive at the cell or cell line claimed. Cf. Cell Genesys Claim 112.

Cell Genesys has presented claims corresponding to six of the eight alternative aspects of

the invention identified by ARS. The two aspects not the subject of a specific Cell Genesys claim involve "collection" of the "gene product" o the transferred cell. As recites the amounts to be collected, nor the actual nature of the gene product, are set forth, claims directed thereto have not been involved.

Respectfully submitted,

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